

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 5, 8-11 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ziegler (US 2,699,457). Patentees disclose a material having polyethylene chains bound to aluminum (column 1, lines 33-45 and column 2, lines 19-25). Patentees imply that the molecular weights are 10,000-30,000 at column 8, lines 55-65 and also implies high molecular weights based on stoichiometry at column 2, lines 10-15. With regard to claim 14, a reasonable interpretation of the phrase “residue derived from” a metal halide is the metal itself.

Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference between the product of a product-by-process claim and a prior art product which reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

Applicant's arguments filed 12-25-09 have been fully considered but they are not persuasive. Applicants argue that the metal containing product of Ziegler has only a single polymer chain attached to the metal. However any product of Ziegler with a polyalkylene chain attached would encompass “activator” disclosed by Ziegler in which

a saturated aliphatic radical is attached to a metal and hence the product of Zeigler itself should be able to act as an activator and there is nothing to prevent polymerization of monomer from or insertion into any and all of the aluminum alkyl bonds of Ziegler.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

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